

## § 422.762

organization has therefore failed to substantially carry out the terms of the contract—\$250 per Medicare enrollee from the terminated MA plan or plans at the time the MA organization terminated its contract, or \$100,000, whichever is greater.

[72 FR 68726, Dec. 5, 2007, as amended at 74 FR 1542, Jan. 12, 2009]

### § 422.762 Settlement of penalties.

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

[72 FR 68726, Dec. 5, 2007]

### § 422.764 Other applicable provisions.

The provisions of section 1128A of the Act (except subsections (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

[63 FR 35115, June 26, 1998. Redesignated at 72 FR 68726, Dec. 5, 2007]

## Subparts P—S [Reserved]

## Subpart T—Appeal procedures for Civil Money Penalties

SOURCE: 72 FR 68726, Dec. 5, 2007, unless otherwise noted.

### § 422.1000 Basis and scope.

(a) *Statutory basis.* (1) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected party has had notice and opportunity for a hearing.

(2) Section 1857(g) of the Act provides that, for MA organizations out of compliance with the requirements in part 422 specified remedies may be imposed instead of, or in addition to, termination of the MA organization's contract. Section 1857(g)(4) of the Act makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on MA organizations.

(b) [Reserved]

## 42 CFR Ch. IV (10–1–12 Edition)

### § 422.1002 Definitions.

As used in this subpart—

*Affected party* means an MA organization impacted by an initial determination or if applicable, by any subsequent determination or decision issued under this part. For this definition, “party” means the affected party or CMS, as appropriate.

*ALJ* stands for Administrative Law Judge.

*Departmental Appeals Board or Board* means a Board established in the Office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department.

*MA organization* has the meaning given the term in 422.2.

### § 422.1004 Scope and applicability.

(a) *Scope.* This subpart sets forth procedures for reviewing initial determinations that CMS makes with respect to the matters specified in paragraph (b) of this section.

(b) *Initial determinations by CMS.* CMS makes initial determinations with respect to the imposition of civil money penalties in accordance with part 422, subpart O.

### § 422.1006 Appeal rights.

(a) *Appeal rights of MA organizations.* (1) Any MA organization dissatisfied with an initial determination as specified in 422.1004, has a right to a hearing before an ALJ in accordance with this subpart and may request Departmental Appeals Board review of the ALJ decision.

(2) MA organizations may request judicial review of the Departmental Appeals Board's decision that imposes a CMP.

(b) [Reserved]

### § 422.1008 Appointment of representatives.

(a) An affected party may appoint as its representative anyone not disqualified or suspended from acting as a representative in proceedings before the Secretary or otherwise prohibited by law.

(b) If the representative appointed is not an attorney, the party must file written notice of the appointment with